IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 367 OF 2003

SUMMARY SUIT NO. 3901 OF 2002

Mrs.Raginidevi P. Surana .. Plaintiff

versus

M/s.Choutmull Manakchand .. Defendant

...

Ms. K.Lata i/b R.D. Suvarna for the plaintiff.

Mr.B.N. Vaishnawa i/b B.N.Vaishnawa & Co. for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 24th January 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This suit is filed by the plaintiff for

recovery of the loan of Rs.2,50,000/- given to the defendant and interest thereon. Though there is no written agreement regarding the loan, the plaintiff has annexed to the plaint at Exhibit-A a letter of confirmation purportingly signed by the defendant which shows that the defendant has received a loan of Rs.2,50,000/-. The defendant has signed the said acknowledgement. It has been held that signing of a letter of confirmation or signing in the account books creates a promise to pay which is in writing and therefore, the suit is maintainable as a summary suit.

3. In paragraph no.7 of the affidavit in reply, the defendant has admitted that the defendant had taken a loan of Rs.2,50,000/- and has further admitted that he has paid interest thereon upto 30th march 2001. In view of this clear admission by the defendant of having received the loan and also regarding the payment of interest, the plaintiff in the normal circumstances would have been entitled to a judgement. However, merely as an act of mercy, I am inclined to grant a conditional leave to the defendant.

4. The defendant is granted conditional leave to defend the suit subject to his depositing in the Court a principal sum of Rs.2,50,000/- within a period of four weeks. On such deposit being made, the plaintiff shall be entitled to withdraw the same by furnishing a bond for repayment in the event so ordered by the Court. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of one month.

D.G. KARNIK, J